

**WASHINGTON STATE  
GAMBLING COMMISSION MEETING  
THURSDAY, SEPTEMBER 10, 2009  
APPROVED MINUTES**

**Chair Keven Rojecki** called the meeting to order at 1:35 p.m. at the Mirabeau Park Hotel in Spokane and introduced the members present:

**MEMBERS PRESENT:**     **Commission Chair Keven Rojecki**, Tacoma  
                                 **Commission Vice-Chair John Ellis**, Seattle  
                                 **Commissioner Peggy Ann Bierbaum**, Quilcene  
                                 **Commissioner Mike Amos**, Selah  
                                 **Commissioner Michael Reichert**, Maple Valley  
                                 **Representative Gary Alexander**, Olympia  
                                 **Representative Geoff Simpson**, Covington

**STAFF:**                     **Rick Day**, Director  
                                 **David Trujillo**, Deputy Director  
                                 **Mark Harris**, Assistant Director – Field Operations  
                                 **Melinda Froud**, Lead Staff Attorney  
                                 **Jerry Ackerman**, Senior Counsel, Attorney General's Office  
                                 **Gail Grate**, Executive Assistant

**Staff Accomplishments**

**Chair Rojecki and Director Day** congratulated Assistant Director Mark Harris for 15 years of state service, all with the Gambling Commission, and presented him with a certificate and pin. Mark has been with the Gambling Commission since 1994, starting as an agent in the Northwest Region and progressing to Assistant Director in 2006. He is a Certified Public Accountant and a Certified Fraud Examiner. Mark acknowledges that the proudest and best moment of his life was when he had the opportunity to marry his wonderful wife, Catherine, who is in the audience.

**1. Underage Gambling Compliance Recognition**

**Chair Rojecki, Director Day, and Assistant Director Harris** presented certificates to the following licensees who passed all their underage gambling inspections.

- Classic Island Casino, Kennewick – Teresa Jackson, Shift Supervisor; Angela Bakunowicz, Accounting; and Matt Ramshaw, Compliance Manager
- Coyote Bob's Casino, Kennewick – Raelynn Gallegos, Casino Manager
- Crazy Moose Casino, Pasco – Harold Walford, Casino Manager. Victor Mena, Chief Operations Officer, Nevada Gaming, is the owner of both Coyote Bob's Casino and Crazy Moose Casino.

## 2. **Agenda Review / Director's Report:**

**Director Day** asked for a moment of silence to acknowledge the passing of Joel Wong, Muckleshoot Tribal Gaming Agency Director. Staff wanted to extend sympathy and prayers to Joel's family and co-workers. Many people had the privilege of working with Joel and he will be missed. He was a friend and constant advocate of effective and fair regulation.

Director Day briefly reviewed the agenda, noting the "60 Minutes" video clip would be moved forward, followed by the Texas Hold'em demonstration.

***Representative Alexander arrived at 1:50 p.m.***

### *"60 Minutes" Video Clip*

**Director Day** explained Version Two of the "60 Minutes" video clip is about an internet gambling poker cheating operation and describes some of the threats to internet gambling which is not really monitored or regulated. The only difference staff could see between the two versions was that Version Two clarified that no action had been taken and that nobody suffered any consequences.

### *Summary of Repeal of Manufacturer/Distributor Credit and Pricing Rules*

**Director Day** explained the Commission repealed the manufacturer/distributor credit pricing rules a number of years ago. Chair Rojecki requested a report summarizing the Commission's actions regarding the repeal of and subsequent complaints about manufacturer/distributor credit and pricing restrictions.

**Assistant Director Mark Harris** explained his report summarized the staff proposed rule changes, the complaints received, some public proposed rule changes, and meetings held with the Attorney General's Office, Fraud Division. AD Harris provided a brief conclusion regarding his research, which basically indicated there appeared to be legitimate business reasons why certain manufacturers were not selling to certain distributors. The Attorney General's Office, Fraud Division, said there was nothing they could do because it appeared there were legitimate business reasons and there was no legal statutory authority under the RCW to enforce anti-trust rules. The Commission would have to request the statute be changed to give them authority to enforce those types of activities. One of the complaints was against a manufacturer that did not have manufacturing capacity. That manufacturer has since had more capacity and has started selling to the couple of distributors that were complaining about the manufacturer not selling to them in the past. It was a legitimate reason that basically came full circle.

**Chair Rojecki** asked if Mr. [Don] Harris or any other distributor had contacted staff in the past month inquiring about this. **Assistant Director Harris** replied staff had not been contacted.

**Commissioner Reichert** asked if there was a door or loophole, if there was a problem for strong arming on the part of distributors, that some unethical player might be able to use

regarding, although notwithstanding, the fact of three instances that were not a problem according to the Attorney General's office in our the review. **Assistant Director Harris** replied that, not being a lawyer, he could not specifically answer that question and deferred to AAG Ackerman, but imagined that under any circumstance there would be an opportunity for somebody to do something. **AAG Jerry Ackerman** thought the conversation with the Anti-Trust Division of his office indicated it was possible to come up with combinations of businesses, individuals, or entities to do things that would violate anti-trust laws. AAG Ackerman noted he was not a party to the conversations that took place with the Anti-Trust Division, so did not know exactly what they said, but that was what he understood from the reports he received. No specific instances of that type of activity were conveyed to the Attorney General's Office, and it was decided not to open an investigation at that point. But the anti-trust laws are out there and, as far as AAG Ackerman knew, they apply the same to gambling businesses, gambling manufacturers, and distributors as to everyone else in the world in an appropriate case. Those laws could be violated and investigations and sanctions could follow. But the issue for this Commission is whether they have the statutory authority to regulate otherwise lawful business conduct between these entities, which was the subject of the initial discussion. The conclusion was that there really was not anything in the Commission's authorizing legislation that provided that. Could abusive practices take place? Sure. The question would be whether they violate anti-trust consumer protection or other fair business practice type statutes. **Commissioner Reichert** clarified his question was geared more toward whether there was something this Commission should do by way of alerting the Legislature or saying there was the potential for abusive behavior on the part of wholesalers that might lead to corruption in the gambling industry. **AAG Ackerman** recalled that at the time this first came forward one of the reasons staff asked the Commission, as a whole, to revisit the then existing rules was that they had not found the type of activities being described. Staff reported to the Commission that, given the agency's mission statement of keeping gambling legal and honest, they were not finding this to be an issue or a problem, and the reviews entailed the use of resources that could be better expended elsewhere.

**Commissioner Ellis** indicated the one thing that struck him, given his anti-trust background, was that all of this was apart from the fact that in most instances the evidence did not suggest anti-trust violations. But with regard to the Magic Distributing complaint, the report indicated that one of the manufacturers that was no longer doing business with Magic had received complaints from other distributors that Magic was undercutting prices, and the manufacturer did not want to be a loss leader for Washington State. If this type of issue arises again, and staff are talking again to the Attorney General's office, that is certainly anti-trust smoke that an anti-trust investigator or lawyer would want to pursue. The manufacturer has the right to make a unilateral decision that they do not want their market in the state to be undercut with lower prices, which happens quite a bit. But at the same time, if there was any coercion on a distributor to adhere to a manufacturer's recommended pricing schedule, particularly if manufacturers jointly set that pricing schedule, it would be an anti-trust violation. **Chair Rojecki** did not think that would be anything this Commission would undertake. **Commissioner Ellis** agreed, indicating he was putting it in the context of discussions with the Attorney General's Anti-Trust Division or the Federal Trade

Commission. **Assistant Director Harris** affirmed staff would keep that in mind if the issue resurfaces.

**Director Day** reported the intent of the demonstration on Texas Hold'em was to provide something that would depict the concept of "all-in" wagers for the Commission.

**Commissioner Ellis** pointed out that Senator Prentice had a very strong interest in this topic and wondered if it would be possible to hold this presentation until she arrives – if staff has an idea of her schedule. Neither **Chair Rojecki** nor **Director Day** knew her schedule, but it was assumed she would already be here. **Commissioner Bierbaum** was almost certain she had seen Senator Prentice earlier in the hotel. **Chair Rojecki** said the presentation would be held until Senator Prentice arrived or staff was informed she was not attending.

#### Correspondence

- > Commission Fact Sheet
- > Licensee Comparison Chart
- > History of Card Room Regulation and Wager Limits
- > Mini-Baccarat Approval Update & Financial Impact of Increasing Betting Limits
- > Government Reform – Small Agency Cabinet

**Director Day** referred the Commission to the final version of the Fact Sheet about the history, authority, and duties of the Gambling Commission. This has already been used with legislators as a reference about why the Commission was formed, several of its current functions, and how it compares to other agencies inside and outside Washington State. **Director Day** explained that as part of the consolidation study process, Directors' meetings are being held with the four directors of the Liquor Control Board, Lottery, Horse Racing, and Gambling Commissions. Part of what is being looked at is cost savings issues, duplication, or regulation, which includes processing licenses. Part of the concept was whether there was an overwhelming appearance, either actual or in perception, of duplicating each other's work. There are distinct differences between the organizations. These agencies issue over 44,000 licenses, but there are no licensees in common to all four agencies. There are a small number of licensees that some of the agencies have in common – with the largest number being between the Washington Gaming Commission and the Liquor Control Board, but about a third of those (2,000) are amusement games. The Liquor Control Board and Lottery Commission do not license individuals, but the Gambling Commission licenses over 17,000 individuals in Washington State and the Horse Racing Commission licenses individuals.

**Representative Gary Alexander** commented that, even though it looks like there is not total duplicity here, there probably is some. He guessed he was going back and wearing his UBI hat when he was asked by the Governor to look at how to bring businesses together in terms of one-stop licensing operations. Representative Alexander asked if staff had thought about forming some sort of a task force to look at where the burden could be eased on businesses in terms of duplicate license requirements. Everywhere he goes, Representative Alexander hears that of the licenses that have to be issued, some of the licensees have the

licenses plastered on the wall behind their small establishments. But it seemed to Representative Alexander that in the areas of lottery, and liquor, and gambling, to the extent there could be found some ability to have one stop, or services that could be performed by certain individuals that could do more than one licensing operation, might be in the best interest of some customer service and efficiency operations. **Director Day** responded that because it is referred to in the study, staff thought this would give a bigger picture overall of the licenses and the different ways the agencies do them. For instance, the Lottery Commission actually contracts organizations; they do not really license them. Staff is following up in a manner similar to what Representative Alexander suggested, which is to actually look at the licensing process of each organization. Director Day thought Representative Alexander may have been referring to the Master Business License program, and to see if that has more application either by a change in the various agencies' processes or in the Master Business License program to help facilitate the other agencies. As a matter of fact, Master Business License people are attending the Director's meeting next Monday to talk about the program. **Representative Alexander** asked to be kept posted. **Director Day** affirmed.

**Director Day** reported the next item was information obtained from legislative staff at the Legislative Work Session meeting on June 29, 2009, which includes a graph from 2000 to 2009 and reflects the history of wager limits. Also included was card room regulation history back to 1973, in the perspective of the legislative staff, which shows the establishment in 1997 of a \$10 wager limit for card rooms. Director Day reported that when the Commission enacted baccarat and authorized the wager limit in house-banked card games to go to \$300 there was discussion at the Commission meeting that baccarat might impact or promote food sales and how increasing bet limits might impact the business and its profitability. The Commissioners asked staff to respond back with financial information when it was available to see if any impacts were obvious. Based on the limited information staff have, which is just second quarter of 2009 since the changes did not go into effect until the first quarter of 2009, it is hard to identify any dramatic change, which may be as much dependent on the state of the economy as from the Commission decisions. Staff recommends bringing this information back to the Commission in March of 2010.

**Commissioner Reichert** said he knew it was just a calculation, but asked if there was an overall statement somewhere about the gross receipts. Apparently staff has seen a significant drop across a number of these facilities. Commissioner Reichert asked if there was any way to have a roll-up to see if there is a broad impact of 20 percent reduction – 10 percent overall. **Director Day** explained they are actually total gross receipts statewide versus 2008 gross receipts. He affirmed staff could provide that information, but pointed out the numbers are always about a year behind. The house-banked card rooms file financial statements with the agency once a year for the preceding year. Director Day thought the next reports would be due in April of 2010. **Deputy Director Trujillo** clarified staff should have the financial statement reports through fiscal year ending June 30, 2008, next month. The data would still be behind, but that would provide two annual comparisons, and then staff could follow-up with the additional request for this information.

**Commissioner Ellis** asked when, approximately, some of the major tribes (the Tulalip's, the Puyallup's, the Muckleshoot's) were authorized under the Compacts to go to \$500 limits in poker. **Director Day** recalled it was in the original scheme of the Compacts because card games came in when the State first negotiated with the Tribes, and the \$250 was then phased in around 1991. Director Day did not recall whether it was a negotiated increase since that time, but would check and report back. **Commissioner Ellis** believed that by 2000 those major casinos were authorized to offer poker at \$500 limits. **Director Day** thought that by the time staff got through the full cycle of each casino with the phase in period, all the Compacted Tribes were authorized \$500.

**Chair Rojecki** noted the history report shows the year the Commission established the \$2 wager limit and where it went from \$10 to \$25, but it does not indicate when the limit was raised to \$10. Chair Rojecki asked when the limit went to \$10. **Director Day** indicated that Gary Murrey had offered his opinion from the audience that it was in 1987. Staff would verify Mr. Murrey's recollection and provide the answer to the Commissioners.

**Director Day** pointed out the next item was staff's response to the Office of Financial Management's request to all the small agencies, in the continuing effort to look at a potential for streamlining government, to answer a set of questions.

**Director Day** reported he had just been informed that Senator Prentice was not feeling well and would not be attending the meeting.

#### *Texas Hold'em Card Game Demonstration (Video)*

**Special Agent Supervisor Josh Stueckle**, Spokane Field Operations, presented a video showing two scenarios on Texas Hold'em "all-in" betting – one scenario with two players and another with more than two players. SAS Stueckle described the different scenarios.

#### **Comments From the Public Regarding Director's Report**

**Chair Rojecki** called for public comment on the Director's Report.

**Mr. Matt Ramshaw**, Island Casinos, stated he has been a poker manager for a few different casinos and noticed there seems to be some confusion with how the maximum bet has been set. Mr. Ramshaw noticed there was a \$500 "all-in" wager available that was up for discussion that was turned down because it was hard to understand. Mr. Ramshaw brought to the Commission's attention that right now there is a \$40 maximum bet every time somebody bets. Currently there are four rounds of betting and a player can bet and raise three times. A player can wager \$640 every hand that is played, so if what the intent is to regulate the amount of money a player can lose, it can still be done by the amount of money that can be on the table; whether it is the amount of money purchased to play the game, or the amount of money the players can bet total per hand. There are a couple casinos, one being Little Creek Casino in Shelton, Washington, that have what they call a "no limit" game, but it is \$5 to \$500. Any player can bet up to \$500 in front of them; they could have \$1,500 in front of them, but they could never lose more than \$500 in front of them. So the

game is regulated to control how big the pots get by the largest bet the players can make. As of right now, technically, operators can allow one player to lose \$640 in one hand. Mr. Ramshaw just wanted to make sure that was brought to the Commission's attention because that \$500 "all-in" wager was competitive to what other casinos are offering; however, card rooms were not allowed to do so because the bet is too large. Mr. Ramshaw did not quite understand the reasoning behind not allowing an "all-in" wager, or a so called "pot limit" wager that would be set at whatever amount would be available for the players to play with. And not allowing the players to have an "all-in" type atmosphere poker room – that is one of the reasons why players are interested in playing "all-in" poker. The players do not have that option unless they travel to a tribal casino, which is not always easy for most people. That was pretty much the point Mr. Ramshaw wanted to make.

**Chair Rojecki** thanked Mr. Ramshaw, and pointed out that the \$500 item would be dealt with tomorrow.

**Director Day** indicated he had failed to mention an item during his Director's Report. Senator Menendez had introduced a new piece of internet legislation, similar to the bill that Barney Frank had previously introduced. This bill is narrower and is limited to what the bill defines as internet game of skill where the success is determined predominately by skill – and poker is one of those games in the bill. The Frank bill is broader in its application as far as internet gambling.

### **3. New Licenses and Class III Certifications**

**Deputy Director Trujillo** explained the house-banked public card room report will be included monthly. The report is separated into three sections: the current house-banked card room (HBCR) locations that are licensed and operating; those HBCRs that are currently licensed, but not operating; and current HBCR pending applications. DD Trujillo pointed out an informational, pre-licensing report for E-Max Gaming Corporation who has applied for a manufacturer license, and is listed on page 5 of the Commission Approval List. Staff recommends approving all licenses and Class III certifications listed on pages 1 through 13.

**Commissioner Ellis** made a motion seconded by **Commissioner Amos** to approve the list of New Licenses and Class III Certifications as listed on pages 1-13. *Vote taken; the motion passed unanimously.*

### **4. Approval of Minutes – August 13-14, 2009, Regular Meeting**

**Commissioner Amos** made a motion seconded by **Commissioner Ellis** to approve the minutes from the August 13-14, 2009, regular Commission meeting. *Vote taken; the motion passed with four aye votes (Commissioner Bierbaum abstained).*

### **5. Default - Megan M. Black, Class III Employee, Revocation**

**Ms. Melinda Froud** reported that on January 12, 2009, Megan Black, a Class III employee, was convicted of Assault in the Fourth Degree. On April 22, 2009, the Tulalip Tribal Gaming Agency revoked Ms. Black's tribal gaming license. Ms. Black is on probation until

January 2010 and is not currently working as a Class III employee or as a card room employee elsewhere. Director Day issued administrative charges by certified and regular mail. The certified mail was returned as unclaimed; the regular mail was not returned. Ms. Black's telephone number was no longer in service. Ms. Black did not respond to the charges and by failing to respond she waived her right to a hearing. Staff recommends the Commission enter a final order in default, pursuant to RCW 34.05.440, revoking Megan Black's certification.

**Chair Rojecki** asked if Ms. Megan Black or a representative was in the audience; no one stepped forward.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Amos** to enter a findings, conclusions, decision, and final order in default in substantially the form presented by the staff revoking Megan Black's certification to conduct gambling activities. *Vote taken; the motion passed unanimously.*

#### **6. Other Business / General Discussion / Comments from the Public**

**Chair Rojecki** called for public comment.

**Ms. Delores Chiechi**, Recreational Gaming Association (RGA), asked about the materials that are provided in the packet that gets mailed versus the ones that the Commissioners get in their packets. There are several items under correspondence that the public do not get to see until the conclusion of the meeting. Ms. Chiechi requested that the documents either be included in the mailings or provided on the back table at the meetings so she would not have to harass staff after the meeting to see the documents. Ms. Chiechi thought it would be helpful for the attendees to see the charts and documents that are being presented to the Commission and discussed.

#### **Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation, and Adjournment**

**Chair Rojecki** called for an Executive Session at 2:50 p.m. to address pending investigations, tribal negotiations, and litigations. **Chair Rojecki** called the meeting back to order at 4:50 p.m. and immediately adjourned.

*[all 5 Commissioners & 2 Ex-Officio Members were present during Executive Session]*



**WASHINGTON STATE  
GAMBLING COMMISSION MEETING  
FRIDAY, SEPTEMBER 11, 2009  
APPROVED MINUTES**

**Chair Keven Rojecki** called the meeting to order at 9:10 a.m. at the Mirabeau Park Hotel in Spokane and introduced the members present, then called for a moment of silence in remembrance of September 11, 2001. The President has declared this day as a volunteer day and asked people to volunteer for their communities.

**MEMBERS PRESENT:**     **Commission Chair Keven Rojecki**, Tacoma  
                                 **Commission Vice-Chair John Ellis**, Seattle  
                                 **Commissioner Peggy Ann Bierbaum**, Quilcene  
                                 **Commissioner Mike Amos**, Selah  
                                 **Commissioner Michael Reichert**, Maple Valley  
                                 **Representative Gary Alexander**, Olympia  
                                 **Representative Geoff Simpson**, Covington

**STAFF:**                     **Rick Day**, Director  
                                 **David Trujillo**, Deputy Director  
                                 **Mark Harris**, Assistant Director – Field Operations  
                                 **Melinda Froud**, Lead Staff Attorney  
                                 **Jerry Ackerman**, Senior Counsel, Attorney General’s Office  
                                 **Gail Grate**, Executive Assistant

**RULES UP FOR FINAL ACTION**

**7. Staff Proposed Rule Change – Repeal of All-in Wager of \$500 for Texas Hold’em Games**

**a) Amendatory Section WAC 230-15-135 – Wager limits for nonhouse-banked card games**

**Assistant Director Harris** reported that after the rule change was approved allowing “all-in” wagers of \$500 in Texas Hold’em poker games, staff identified a problem it created in the wagering structure. The rule change allowed for only an “all-in” wager to exceed the \$40 wager limit, but did not allow players to make a call or a matching wager exceeding the \$40 limit. The rule may now be unworkable and also be ambiguous as to who is eligible to make the “all-in” wager. Is the player required to have \$500 or less to place an “all-in” wager? If players have more than \$500 in chips, are they limited to \$500 or would they even be eligible to make an “all-in” wager? By removing the “all-in” reference, the rule would revert back to the \$40 limit for all nonhouse-banked card game wagers. If adopted, staff recommends an effective date of 31 days from filing.

**Chair Rojecki** asked if there were any questions or public comment.

**Mr. Chris Kealy**, President of the RGA, stated that last month he testified as to the fact that he thought the rule, as it stands on the books, is in fact workable and correct. And that the reason the industry has not implemented the rule is that they sought sort of a stand down arrangement because when the rule came about and was legal for them on July 1, there was already enough political pressure to take a second look at it and figure out if it was the appropriate rule, or if in April, when the Commission did in fact approve it, that there was enough confusion that left people in question as to what they approved. Mr. Kealy believed that in a good effort, the industry has stood aside and waited for this process to play itself out. Mr. Kealy did not think all of the information has jelled with all of the parties, and the fact is, the rule works; it is on the books and it is legal. Mr. Kealy would like a chance for the industry to be able to provide a limited version of what exists in the marketplace today. They recognize that they are not the same as the government relationship that this Commission and the state of Washington has with tribal concerns, but at the same token, he is three miles away from the Muckleshoot Casino and deals with a game and a product mix that has been authorized by the Legislature and is being withheld by this Commission for what amounts to political pressure. It just seems that is not what is supposed to happen; it is not a regulatory situation; they can clean up the rules. Since this application for repeal has been put forward, RGA members have made themselves available; they have talked to staff; they have worked and had a lot of dialogue and work study. Mr. Kealy absolutely appreciated Commissioner Rojecki's commitment to getting to the study session yesterday, knowing how difficult his schedule is, and Commissioner Ellis was there as well. Mr. Kealy thought there was a healthy dialogue at the study session and thought there was an opportunity to table this proposal and Item 13 on the agenda and follow the leadership of Chair Rojecki and look into what should be done. But just to up and repeal the section when the industry has stood aside and not implemented it to see if a workable solution could be found, to Mr. Kealy that is a take for something that the RGA has worked pretty hard to get, and are completely willing to amend. But just to take it out, throw it away, and trust in the process to bring something in the spring, or sometime next year, Mr. Kealy just did not know.

**Chair Rojecki** asked AAG Ackerman if the Commission could table the proposal, whether they had six months. He noted it looked like it was filed in May. **AAG Ackerman** replied it appeared this could be active until February 2010 and, of course, it could be continued with the filing of the proper forms.

**Mr. Kealy** asked AAG Ackerman if, just structurally, it could be suspended; if it was possible this could be amended to suspend this rule until further action is taken. **AAG Ackerman** was not aware of a provision that allows for the suspending of the rule. Obviously there are probably different ways to achieve a similar end through sunset clauses and other things. **Mr. Kealy** said he was sorry and thanked AAG Ackerman for trying to answer.

**Commissioner Ellis** noted the uncertainty that has been created with regard to the line between Class II and Class III tribal gaming as a result of this rule had been alluded to, and asked what the effect would be of that uncertainty if this rule were simply tabled rather than being repealed at this time. **AAG Ackerman** was not sure he understood the question. His understanding was that all, or almost all, of the Indian Gaming Regulatory Compacts with the various Tribes specifically address poker in some fashion. There may be one or more that AAG Ackerman was not aware of, but by and large they address poker specifically within the Compacts. So to the extent that anything this Commission did that the Tribes interpreted as somehow impacting the lines that have been drawn within the individual Compacts, then the Tribes are free under the Indian Gaming Regulatory Act and under the provisions of the Compacts to ask to open negotiations with regard to the topic of poker. Of course, the Commission's position would be that that is the proper process; that if it is felt that some sort of regulatory or statutory change has taken place that impacts the provisions of the Compact, then either party has the option to seek open negotiations to amend the Compact. **Commissioner Ellis** understood that was certainly counsel's interpretation. His question really went to the position that Chairman Allen had expressed, recognizing there may be a counter-argument. Commissioner Ellis was concerned that tabling this rule, as opposed to amending it to eliminate the \$500 limit, would unnecessarily keep that issue alive. **AAG Ackerman** thought the answer was relatively short – which is that Chairman Allen expressed his views. As AAG Ackerman has indicated, there are a myriad of provisions in the different Compacts and the manner in which they address poker specifically; Class II and Class III in general. AAG Ackerman's guess would be, although he did not want to speak for Chairman Allen, that if the Commission took no action Chairman Allen would continue to view the situation in the manner he did when he wrote the original letter.

**Mr. Kealy** said the position Chairman Allen took on the letter that was public that said this freed up some of their tables that they classify as Class III gaming in their Class II poker room; it made available more Class III gaming on their main floor, which was not in demand. They are not at full capacity on their tables anyway, so it really was a moot point in what availabilities became which – it probably affected four tables in the state of Washington, at best. And the tax revenue and/or 2 percent contribution, or 1½ percent, or whatever percentage it is to the Problem Gambling, was negligible on the rake calculation.

**Chair Rojecki** thanked Mr. Kealy for his comments, adding he was not sure if those numbers were correct.

**Ms. Joan Mell**, not appearing on anyone's behalf other than as the litigator in the Mudarri decision, stated the discussion that was just engaged in had her curious as to how there could be, in light of that decision, any concern in any manner that a rule change would have any impact whatsoever on the scope of tribal gaming. Ms. Mell has certainly been confronted with the position of the Gambling Commission repeatedly in that litigation that they are two distinct systems. She believed the Court of Appeals in Mudarri articulated the position that they are separate regulatory systems and have different governing laws. Certainly that rule is not going to have any impact on what the scope of authority has articulated under the

Compact process itself, so Ms. Mell was confused by the discussion but offered that she thought Mudarri resolves it.

**AAG Ackerman** commented that he wished Mudarri did resolve it, but did not believe that it did. The problem is that when you look at IGRA and the manner in which it addresses poker and the decision as to whether or not it is Class II or Class III games, the specific provisions of the Federal Act ties into state laws and state regulations and a tribe's ability to assert this specific position.

**Commissioner Ellis** appreciated Mr. Kealy's comments, but, consistent with what Chair Rojecki said yesterday during the study session, his view is that dealing with this issue in a working group of stakeholders representing different interests with no targets to shoot at, with no preconceptions that there is a \$500 limit, or a \$250 limit, obviously there is a \$40 limit so there would be that one target, it is better to start with a clean table and a clean slate and eliminate the various preconceptions that people may have if there is another limit.

**Commissioner Ellis** made a motion seconded by **Commissioner Reichert** that the Commission approve the proposed amendment to WAC 230-15-135 to be effective 31 days after the adopted rule is filed.

**Commissioner Bierbaum** stated she was part of the group that adopted this rule. She thought there were only three Commissioners present then: Commissioner Amos and herself and she thought Commissioner Ellis. **Commissioner Ellis** affirmed he was the nay vote. **Commissioner Bierbaum** was concerned with a process whereby the Commission will adopt a rule when two of the Commissioners were not present (one was not yet appointed), then reconsider the issue almost immediately in the hopes there will be a different composition. Commissioner Bierbaum thought that was wrong; that when the Commission makes a decision, albeit with a smaller group, that decision ought to be respected. She personally felt it was part of this Commission – particularly with Commissioner Ellis making the motion to repeal it when he was one of the nay votes – just undermines the entire process. Commissioner Bierbaum thought the arguments made by staff about its unworkability were unpersuasive. She thought it was obvious that if somebody does an “all-in” bet of \$500 that the other players get to call at \$500, and the rule did not need to be rewritten. She thought if the question was about whether players can do “all-in” if they have \$540 or less, that was obvious. Commissioner Bierbaum did not think these were unworkable problems, but that they were manufactured as a basis to repeal a rule that some people did not like, which she did not think was appropriate. Commissioner Bierbaum was not persuaded that pressure from tribal interests should make the Commission change this rule now, noting it undermined confidence in this process for everybody involved, and obviously she was not voting for it.

Vote taken; the motion carried with three aye votes and two nay votes (Commissioners Bierbaum and Amos voted nay).

**Chair Rojecki** commented that at the study session yesterday he had talked not specifically about this issue but more on the limits of Texas Hold'em and his vision of trying to move forward and get everybody on the same page, because clearly there is frustration from many different sources. It would be his hope as Chair, and all the interest groups involved, to move forward with a clean slate and address these issues, not only for today but towards the future to have some sort of identity of where to go.

**8. Petition for Rule change – Recreational Gaming Association: Player-Supported Jackpot Fund Deposit Requirements**

**a) Amendatory Section WAC 230-15-400 – Accounting for player-supported jackpot funds**

**Assistant Director Harris** reported the RGA is requesting an amendment to allow player-supported jackpot (PSJ) funds to be transferred into the separate PSJ account in addition to directly depositing it into the PSJ account. PSJ funds are considered player funds and, as such, are required to be kept in a separate bank account, separate from all other accounts, to ensure the funds are available and protected for the players. The RGA states that bank transfers post immediately to the PSJ account, which means there is no lag time waiting for a deposit to clear the bank. Transactions post immediately, making it easier to compare the PSJ account balance to the PSJ accrual balance. This change would streamline the deposit and accounting process for card rooms. From staff's prospective, agents would just have to look at online banking statements or other transfer records instead of deposit slips to determine if the PSJ deposit requirements have been met. Staff recommends final action with an effective date of January 1, 2010.

**Chair Rojecki** asked if there were any questions and called for public comment.

**Mr. Gary Murrey**, representing the Recreational Gaming Association on behalf of Dawn Mangano who was unable to attend, explained this is an issue that has been plaguing the industry off and on for a number of years. Electronic transfers make it much cleaner and easier, plus more experienced people, like accountants, can do the transfers instead of the count team. That would give a better control over the situation, better records, and instantly being able to compare the two balances. Mr. Murrey thanked staff for working with the RGA on this issue and moving forward with it and hoped the Commission would vote to adopt this rule.

**Commissioner Ellis** made a motion seconded by **Commissioner Amos** that the Commission approve the proposed amendment to WAC 230-15-400 to be effective January 1, 2010. *Vote taken; the motion carried unanimously.*

9. **Staff Proposed Rule Change to Implement 2009 Legislation – Increase the Price of a Raffle Ticket from \$25 to \$100**

a) **Amendatory Section WAC 230-11-014** – Maximum raffle ticket price

**Ms. Froud** reported the proposed change is to implement Engrossed House Bill 1053 that increases the maximum price of a raffle ticket from \$25 to \$100 and became effective on July 29, 2009. Staff recommends adoption of this rule change with an effective date 31 days from adoption.

**Chair Rojecki** asked if there were any questions and called for public comment; there were none.

**Commissioner Ellis** made a motion seconded by **Commissioner Amos** that the Commission approve Amendatory Section WAC 230-11-014 to be effective 31 days from the date of filing. *Vote taken, motion carried unanimously.*

10. **Staff Proposed Rule Change to Implement 2009 Legislation – Detaining Minors that Gamble and In-House Purchase Programs**

a) **New Section WAC 230-06-011** – Detaining and identifying persons under eighteen years old engaging in or attempting to engage in gambling activities

b) **New Section WAC 230-06-012** – Conducting underage enforcement test program with minors

***Amendment #1 of WAC 230-06-012 Up For Final Action***

**Ms. Froud** reported these two rule changes are to implement Substitute Senate Bill 5040 that allows agents to issue civil infractions to minors who gamble and has a \$125 penalty. RCW 7.80 is referred to in the Substitute Bill and requires agencies to adopt rules on identification and detention of persons committing civil infractions. WAC 230-06-011 says that when issuing the civil infraction, agents or peace officers may detain persons for a reasonable period of time and in a reasonable manner to determine the person's true identity and date of birth. WAC 230-06-012 deals with subsection (4) of the bill which allows licensees to conduct in-house controlled purchase programs, which are called underage compliance tests, and allow licensees to conduct their own tests to determine if the employees are allowing minors to gamble. **Ms. Froud** reviewed the Rule Summary, explaining some of the proposed changes made to WAC 230-06-012 since it was before the Commission in July. Staff recommends adoption of these rules with an effective date 31 days from adoption.

**Chair Rojecki** asked if the strike-throughs and underlines in WAC 230-06-012 were to compare the current proposal to the one filed for discussion in July. **Ms. Froud** affirmed.

**Representative Alexander** said he was trying to find where in the proposed WACs the term "licensed premises" was mentioned because it was a pretty important issue that came up during the session. This only pertains to licensed premises; staff is not going to go into

homes and remove kids that are playing poker in their bedroom. Representative Alexander asked if that was implied or was it explicit somewhere in the rules. **Ms. Froud** replied the rule reads “licensed business premises” and asked if that was what Representative Alexander was concerned with. **Representative Alexander** said in the WAC it reads detaining and identifying persons and allowing for the Gambling Commission special agent or peace officer to detain this person, and asked whether that was applicable only to licensed premises. **Ms. Froud** believed so. **Representative Alexander** said he did not see the wording in the WAC. **Chair Rojecki** asked if the language was in another WAC or the RCW. **Director Day** thought the RCW that was passed would respond to that issue.

**Commissioner Ellis** pointed out that WAC 230-06-011 specifies the grounds under which a person under 18 years of age can be detained, the second subsection indicates that in order to be detained the person is or has played in or participated in or attempted to participate in authorized gambling activities. Commissioner Ellis asked if “authorized gambling activities” was sufficient to ensure this would be limited to premises that have a gambling license issued by the Commission, as opposed to a private home. **Representative Alexander** recalled that issue was brought up during discussions, both in caucus and floor, that this only pertained to licensed premises, so he just wondered where in the WAC it was clarified, so there was a clear understanding. **Commissioner Ellis** asked AAG Ackerman if his interpretation would be that “authorized gambling activities” would mean gambling activities authorized by the Gambling Commission as opposed to ones in a private home. **AAG Ackerman** thought “authorized gambling activity” under RCW 9.46 was one that either the statute authorizes without a license or one for which a required license has been obtained, but he could not find the term “licensed premises” in the sections before the them. **Representative Alexander** said he did not see it either, which was his concern.

**Commissioner Bierbaum** asked if the words “unlicensed premises” were added after the words “authorized gambling activities, would that restrict it more than the Commission wants. **Representative Alexander** assumed that was what the enforcement provisions pertained to; that was the intent of the legislation. He did not see the wording to ensure that statement was being enforced. **AAG Ackerman** responded he did not think the issue Commissioner Ellis identified appears to resolve that concern. An authorized gambling activity is one for which no license is required – in which case it would not be a violation of the law and there would be no reason to do anything – or a license is required. Those are the only two categories of gambling activity under RCW 9.46. If a license is not required then it is not a violation, so no citation would be applicable; or a person is required to have a license. **Commissioner Reichert** qualified on Commissioner Bierbaum’s question; asking if it would hurt to add the phrase she suggested or if it would cause any limitations or problems.

**Representative Geoff Simpson** said it seemed there were authorized gambling activities that take place at places that are not licensed venues. **Director Day** agreed there would be limited activities, like unlicensed raffles. Under the statutory reference, Senate Bill 5040, Section 2, it is unlawful for any person under the age of 18 to play in authorized gambling activities, including but not limited to punchboards, pull-tabs, or card games, or to

participate in fund raising events. So the underlying RCW that was passed is controlling as to where there is a violation that is created; it has to be an authorized gambling activity.

**Commissioner Reichert** said it sounded like the authorized language is a broader net and catches licensed as well. **Director Day** replied that was why it was not re-mentioned in the WAC. If it is controlled in the RCW, staff does not include it in the WAC. **Director Day** felt it was pretty well addressed.

**Representative Alexander** asked if the Commission would have any opposition under WAC 230-06-011 where it says “or attempting to engage in” to adding the word “authorized” gambling activities. He thought that would clarify the same language as it is referring to in the RCW. **Chair Rojecki** asked Ms. Froud what she thought about adding the word “authorized” before “gambling” in the title of the amendment. **Ms. Froud** asked if **Chair Rojecki** meant to have the title match more of what is in subsection (2) where it talks about the authorized gambling activities. **Chair Rojecki** replied no, he meant to add the word “authorized” in the title before “gambling activities.” The title would read “Detaining and identifying persons under eighteen years old engaging in or attempting to engage in authorized gambling activities.” **Ms. Froud** did not believe that would be problematic. **Director Day** agreed. **Chair Rojecki** suggested making that a friendly amendment to any motion that is made, if it resolves the problem.

**Commissioner Reichert** asked what was “reasonable” as it relates to detaining an 18 to 21 year old in terms of time. Do we have a definition that the Commission operates under, or is there a general law enforcement definition? When working with minor children, it becomes a question about what is our policy with regards to “reasonable.” **AAG Ackerman** replied that, to the best of his knowledge, it is not defined by statute or by regulation. In the criminal law arena, courts deal frequently with reasonableness as a concept. **AAG Ackerman** did not know exactly what analogy or criteria a court would apply to this specific WAC, but it is a fairly common usage in criminal statutes. **Commissioner Reichert** was concerned as it relates to 18 to 21 year olds, because that is part of his work – he works with minors, and there is a great deal of law in how agencies and governments can deal with the rights of minors. **AAG Ackerman** agreed. Typically, in a criminal or quasi-criminal setting, both for adults and for juveniles in the juvenile system, a court will look to the purpose of the detention; what they can legitimately attempt to try to achieve during the detention. Typically, cases have held that a person can be detained for a period of time legitimately necessary to have them produce identification, do a check if necessary to see if they are in fact the person they are claiming to be, those sorts of things. But it is not a bright line rule; it is sort of a sliding scale depending upon the facts and circumstances of the individual stopped and detained. **Commissioner Reichert** asked if this could be discussed further at some future work session or meeting because it is an area where staff probably does not do a great deal of activity, so the Gambling Commission is not the experienced agency at it that perhaps others might be. **AAG Ackerman** affirmed, adding he did not know how often the Commission dealt with it but, if the Commission chose to do so, some criteria could be lifted from the cases that discuss reasonableness in a criminal setting and incorporate that into a WAC. **Commissioner Reichert** thought the purpose would be to give staff guidance as to what the Commission’s intent was in this respect. **Director Day**



thought part of the actual reason – the concern Commissioner Reichert was talking about – was why this WAC is even required because if it were a person of age, the Commission would not even have to put this WAC in place. But the particular statute requires that the agency put this WAC in place, which is referred to in the Senate Bill. The RCW language says a person who is unable or unwilling to reasonably identify himself or herself to an enforcement officer may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction. So the RCW address that and narrows it even more. That is part of the reason staff moved forward with this WAC and the specific language in it – it was a requirement of RCW. Director Day made a note to put “reasonable” on future discussions.

**Chair Rojecki** called for public comment.

**Ms. Dolores Chiechi**, Recreational Gaming Association, testified in support of the rules before the Commission and thanked staff for working with them on a few small wordsmithing changes that made the RGA members a bit more comfortable with what they are allowed to do. Currently operators can work with the Liquor Control Board for controlled purchase programs to make sure their employees are acting in the appropriate manner, and this allows for the same to occur on the gambling side of the operation.

**Mr. Gary Murrey** was concerned that if raffle tickets are an authorized gambling activity in the state and an underage person participates in that at a soccer game, or a volleyball game, or someone comes to their house to sell one, do they now fall into this where they could be held at anyplace where they try to purchase a ticket? Mr. Murrey admitted he was not totally familiar with the raffle rules, but it was a concern that in the context of raffle tickets this may take it outside of licensed premises, within bingo and all that, and then we are fairly clear; but this could take it outside and be right to Representative Alexander’s concern.

**Director Day** knew the whole issue of raffles was fairly well discussed and was an issue during the legislative session, which is why the bill itself was changed from having raffles right in the primary section to being moved down where it says as authorized by the Commission. There were those that had concerns about whether in certain raffles underage persons should be able to purchase raffle tickets. Those issues were brought up and provided an opportunity for those who thought it was necessary to come before the Commission and argue for a change in the raffle rules. But still, as far as the statute is concerned, that is a form of authorized gambling.

**Chair Rojecki** asked if Director Day recalled what section that was under. **Director Day** replied it was on page two, line six, of the bill – after it lists the authorized activities it says, persons under the age of 18 may play bingo, raffles, or amusement game activities only as provided in the Commission rules. Before the discussion on raffles in the Legislature, raffles was not listed in there; it was taken out of the section above it and placed there because of the whole discussion about raffles. If the Commission changes its current rules, then that would change the application. **Chair Rojecki** asked if Director Day felt this actually resolved the concern just addressed in public testimony – more so than the WAC.

**Director Day** believed it did; that the RCW and the debate over that clarified it. **Assistant**

**Director Harris** agreed that would also be his thought. **Mr. Murrey** affirmed that was what he was looking for.

**Commissioner Ellis** made a motion seconded by **Commissioner Bierbaum** that the Commission approve New Section WAC 230-06-011 as presented, with the exception of amending the title of the section to read “Detaining and identifying persons under eighteen years old engaging in or attempting to engage in authorized gambling activities,” and that the Commission approve New Section WAC 230-06-012, as stated in Amendment #1, with the following amendment to that section: in subsection (3) of the section, the last line should read persons who are at least eighteen years of age but less than twenty-one years of age to conduct underage compliance tests, with the sections to be effective 31 days after filing. *Vote taken; motion carried unanimously.*

**11. Staff Proposed Rule Change – Significant Progress Requirements for Charitable and Nonprofit Organizations**

**a) Amendatory Section WAC 230-07-020 – Making “significant progress”**

**Deputy Director Trujillo** reported that staff is proposing this rule change to restore the language that clarified significant progress for all charitable or nonprofit licensees. Significant progress is required under RCW 9.46.0209 and prior to the Rule Simplification Project (RSP), significant progress was defined for all charitable and nonprofit organizations. Subsequent to the RSP, the significant progress definition was inadvertently limited to Groups IV and V – those charitable or nonprofit organizations that make \$3 million or more. There have been no statements supporting or opposing the rule change. Staff is recommending adoption with an effective date of 31 days from filing.

**Chair Rojecki** asked if there were any questions or public comment; there were none.

**Commissioner Ellis** made a motion seconded by **Commissioner Amos** that the Commission approve the proposed amendment to WAC 230-07-020 to be effective 31 days from filing. *Vote taken; motion passed unanimously.*

**12. Staff Proposed Rule Change – Reporting Name Changes to Licensing Operations**

**a) Amendatory Section WAC 230-06-095 – Change given name, trade name, or corporate name**

**Deputy Director Trujillo** reported staff is proposing this amendment to allow individual license holders to report name changes 30 days after the effective date of the name change. Currently name changes must be reported 30 days before the name change, but individuals are unable to submit proof of the name change prior to that change. Licensees and staff have to do twice the work – the licensee reports the name change 30 days in advance and then submits the proof afterwards. Staff is recommending adoption with an effective date of January 1, 2010.

**Chair Rojecki** asked if there were any questions or public comment; there were none.

Commissioner Amos made a motion seconded by Commissioner Bierbaum that the Commission approve the proposed amendment to WAC 230-06-095 effective January 1, 2010. Vote taken; motion passed unanimously.

**13. Petition for Rule Change – Recreational Gaming Association: Texas Hold'em Wagering Limit of \$250**

**a) Amendatory Section WAC 230-15-135 – Wagering limit for nonhouse-banked card games**

**Assistant Director Harris** reported the Recreational Gaming Association is requesting to increase the maximum amount of a single wager in Texas Hold'em from \$40 to \$250 if it is operated at a house-banked card game licensee. Class E and Class F nonhouse-banked card game licensees would still be limited to \$40. There have been three petitions in the past four years to change the wagering limits. The Commission may wish to consider whether the proposal is consistent with the legislative intent expressed in RCW 9.46.010. The Commission established the current \$40 wager limit for nonhouse-banked card games effective April 2007. In 2009 the Commission did not file a proposed wager increase for nonhouse-banked card games to \$500, did not adopt the proposed increase to \$300, but allowed the specific increase for Texas Hold'em "all-in" wagers, which the Commission recently repealed. Staff recommends denying the petition based on the policy considerations.

**Chair Rojecki** called for public comment.

**Mr. Chris Kealy**, President of the Recreational Gaming Association stated he had listened to staff's presentation of this situation and to him it was a presentation to an outcome, but there are plenty of other factors in the situation. There have been approvals of betting limits that have now been repealed. There has been a history of betting limit increases on an incremental basis for the house-banked side, which has gone from \$25 to \$100, \$100 to \$200, \$200 to \$300, following the incremental concept that has been talked about in the public setting over the past decade at this podium and in this venue. So it has been a process by which it has come in small chunks, come in larger chunks, catch up, played how you have to go. Chair Rojecki has brought about the idea of stakeholder meetings and work in the off hours to try to find a middle ground and put this issue to bed for awhile. At the last meeting, Mr. Kealy brought about the idea of possibly dealing with betting limits, and then not dealing with them for six years. Either way, Mr. Kealy would like to see if it was possible to hold this petition over, and asked AAG Ackerman what length of time it could continue to be held over, if six months was correct. **AAG Ackerman** replied this matter was up for filing and has a 60-day time limit, so this is the last meeting at which the Commission can consider this petition. A new petition could be filed, which could restart the clock at any moment, but the Commission has to act on this petition at this meeting. **Mr. Kealy** asked the Commission to look past the number on the petition and requested it be filed. That way it would put pressure on the process to get the stakeholder meetings in play. There would be six months to deal with this issue to see if a middle ground could be found,

so the businesses could have some light at the end of the tunnel. Mr. Kealy's year-to-date poker rake in Everett has gone from \$275,000 in 2007 to below \$200,000 in 2008, and currently it is at \$153,000 for this cycle. Mr. Kealy said he was closing that business on Monday and will not reopen it if he does not get some change.

**Ms. Angela Bakunowicz**, Classic Island Casino, agreed they need to come to some sort of common ground. It looks like poker is just stuck where it is right now when the rest of the world is changing with it and moving in different directions. It seems like the industry is just being told they cannot do that, they cannot go and move with the economy, move to how the game is now being done, whether it is Vegas, or overseas in Asia, or wherever. It seems like they are the only ones being able to be held back, so Ms. Bakunowicz would appreciate it if the Commission would file this rule, since the other one got taken out with the "all-in" wager and everything, to come to some sort of common ground. Ms. Bakunowicz thought the problem was regulating how much somebody could gamble so they do not go over the top or if there is a way it can be changed to where it says that they could regulate how much they buy in on the table versus putting an actual limit on what they wager on the table. That would mean there is not as much money on the table, which is something to consider also, as long as they can work with the rule.

**Commissioner Bierbaum** addressed her comment to the RGA, stating she did not think that filing a rule to put pressure on a process was necessarily what the rule making process was for. If the RGA wanted the rule adopted, they should put it on for that reason; and if they are having faith in the process going forward, then they should do that process. Commissioner Bierbaum said she was not going to move to have it filed. She thought it was not a helpful addition to a process that everybody has apparently committed to and did not think that was an appropriate use of the rule making process to put pressure on another process.

**Commissioner Amos** felt on the contrary; he thought the Commission needed to file this for discussion to have more talk over this issue that has been going on for probably as long as he has been on the Commission. He moved that the Commission file this for further discussion. **Commissioner Bierbaum** said that since Commissioner Amos voted with her last time, she would feel a lack of camaraderie if she did not second his motion; having said what she just said.

**Commissioner Amos** made a motion seconded by **Commissioner Bierbaum** that the Commission file this for further discussion. *Vote taken; motion failed with one aye vote and three nay votes (Chair Rojecki, Commissioner Ellis, and Commissioner Reichert voted nay) (Commissioner Bierbaum abstained from voting)*

**Commissioner Ellis** asked if the Commission needed to state reasons for refusing to accept the petition. **AAG Ackerman** affirmed that at least one of the Commissioners that voted in the majority should provide their rationale. All of the Commission can state their reasons, but at least one should. **Commissioner Ellis** agreed with Commissioner Bierbaum's earlier statement, but added that he believed the stakeholder process for considering this issue and related issues proposed by the Chair was an excellent idea and he had faith in it. He thought

this petition was unnecessary and, to some extent, might carry excess baggage and impair the open-ended nature of those discussions. Therefore, he did not think it was necessary to have the petition and, for that reason, voted against it.

**Chair Rojecki** echoed Commissioner Ellis' statements and further echoed Commissioner Bierbaum's statement in regards to the political pressure placed upon a rule. Chair Rojecki thought there were two issues here.

#### **Other Business/General Discussion/Comments From the Public/Adjournment**

**Chair Rojecki** opened the meeting for public comment.

**Mr. Gary Murrey** thanked Chair Rojecki for trying to organize a stakeholders meeting and requested that during that meeting there is some discussion about real life poker situations. Mr. Murrey has seen situations before where staff has given the maximum amount of money that can go into a pot on both sides. But when looking at real world situations when looking at this poker, it will show the difference between a set limit \$20/\$40 game and the amount of money that normally goes into a pot versus a spread limit game. Believe it or not, a spread limit game with a \$50 cap has less money going in it on average than a \$20/\$40 game, which can currently be run. Mr. Murrey thought that seeing those and getting some examples of time in play and averages of money in pot would give a great idea of what stakes are being talked about and what the public wants. The industry has gone in an evolution of set limit poker, which was they could only bet "x" dollars, let's say \$20 on the first cards and then \$40 on the second set of cards, to an area where anybody can bet from \$1 to \$500; so most of the bets are in that lower range, \$1, \$3, \$5. It is really a different game that is being talked about, and the industry is just looking for the rules to fit to the new way that the game is played. Mr. Murrey asked that the Commission look at real life examples of how big these pots get and not maximum values, because they are not relative.

**Commissioner Reichert** said he would appreciate the opportunity to see that real life played out. Because, as Mr. Murrey laid it out, if a set limit creates an appearance of limitation as opposed to the real life lived out activities of the bettors, and he would like to hear more about that. Perhaps they could get together and Mr. Murrey could help Commissioner Reichert better understand Mr. Murrey's point of view on that. **Mr. Murrey** replied, absolutely, and they could probably figure out some ways to get actual statistical information on pot sizes when two different games are played. Mr. Murrey said they did not have access in Washington in the non-tribal sector to go spread limit, but thought he could get those numbers from other jurisdictions if needed.

**Chair Rojecki** had a question about what he had discussed in study session yesterday as far as getting a stakeholder group together to identify some of what has been discussed today in regards to spending limits – does the Commission need to request Director Day to have staff facilitate at least communication to all the interest groups that are envisioned, or can it be done outside of this Commission meeting? **AAG Ackerman** replied that Chair Rojecki had just done so, if that was his purpose. **Chair Rojecki** said that was perfect.

**Mr. Jay Gerow** stated he was disappointed the Commission was unwilling to put ZDI on the agenda at this meeting. He could not think of any reason why we would ask for any more delay on our issue having to do with our court case. Of course the Commission could appeal the decision, but Mr. Gerow did not know why you would when the court has –

**AAG Ackerman** interrupted to recommend the Commission not, at this point, take proposals or litigation-related comments from Mr. Gerow, who is here represented by his counsel, who understands that this is inappropriate. Given that this matter is currently in litigation, if Mr. Gerow has a proposal to make, or if counsel has a proposal to make, regarding this litigation, ethically they need to do so through their counsel to the Commission's counsel, who in this case is Mr. Marvin. So, to the extent that either Mr. Gerow or his counsel wants to discuss this litigation, AAG Ackerman recommended the Commission not accept it; that this is out of order, inappropriate, and certainly ethically questionable at this point. **Chair Rojecki** agreed. If Mr. Gerow wants to make comments about things, clearly the Commission cannot have a proposal as stated by our Assistant Attorney General. **Mr. Gerow** agreed, explaining what he was doing was just making a comment that he was very disappointed that ZDI could not be heard on this agenda at this meeting.

**Ms. Joan Mell** stated she was hoping to have an opportunity to discuss and revisit Item 7 on the agenda. Ms. Mell said she was not appearing on behalf of ZDI in this presentation, but was appearing on behalf of herself, being a litigator involved in cases with the Commission. Ms. Mell was concerned, given the discussion on item number 7 which was the discussion where she raised the issue of the Mudarri opinion, that it has been communicated by AAG Ackerman that the Mudarri decision did not clarify the question as to whether or not there was some mirror relationship between what occurs on the tribal side and the Commission's negotiations in the Compact and what occurs when they are dealing with non-tribal entities when adopting rules and regulations. Ms. Mell believe she had Commissioner Ellis on the record in deposition setting testifying under oath that it was his opinion, or belief, that the rules themselves have no application to the Compact negotiations. What Ms. Mell understood was the conclusion today was that the Mudarri decision, which she thought was after Commissioner Ellis' deposition testimony, did not put any finality to that discussion that has been raised and debated in past cases, and she thought in several other applications of rules. There seems to be this underlying ability, and has seemingly been sanctioned today, that tribal entities can look to the rules the Commission adopts and argue, and contend, and persuade them that what they do by rule influences the scope of what they can do by Compact. But in the reverse, the Commission has maintained the legal position, historically, that what they adopt and implement via Compact has absolutely no application to what they would be willing to contemplate or authorize for non-tribal entities. Ms. Mell thought the Commission needed that clarification and that the public needs that clarification. If as a Commission a statement cannot be made in that regard, and they still believe that Mudarri has not resolved that discussion, then Ms. Mell thought it was time to ask the Legislature to direct and clarify that issue for the Commission so these kinds of discussions can end, one way or the other. Either it is open, and it is open both ways, and it works both ways, or it is not; they are distinct and the only universal application would be as a public entity. The Commission is in the position of protecting the public – can there be a different standard for what can be negotiated under Tribal Compact to protect the public, or does

that set some precedent saying that certainly they cannot prohibit one thing on one side and permit it on the other side, and still contend there is some public harm for one entity to authorize it and not the other entity. Ms. Mell thought the Commission needed to take a serious look at what the position is of the Gambling Commission on that, in light of the Mudarri decision itself, if that is still something that AAG Ackerman believes is a viable discussion, or position, for the Gambling Commission to flip flop on – because that is what Ms. Mell was hearing; they are flip flopping.

**AAG Ackerman** commented, for the record, that Ms. Mell's comments are her own and she is entitled to make them, and to the extent that she encourages an examination of policy or policy position by the Commission, that is certainly appropriate. Legally, Mudarri says what it says; and the Indian Gaming Regulatory Act says what it says. AAG Ackerman explained what he was saying, in a roundabout way, was that he did not agree with counsel's interpretation of either the case or the Act. He also thought the last comments mischaracterized both Commissioner Ellis' testimony in other settings and the comments made here today. AAG Ackerman was not suggesting that was intentional, but that was the reality, and certainly to the extent this Commission feels the need for more legal advice on any of those subjects, AAG Ackerman would be happy to provide it in an appropriate setting.

**Commissioner Bierbaum** indicated she did not want to belabor this too much, but she agreed with AAG Ackerman about this Mudarri thing. Mudarri, simply put, just stands for the proposition that it is not true that if it is authorized for the tribes it necessarily has to be authorized for non-tribal gaming. That is all it stands for. There may be circumstances that what the Commission does in the non-tribal arena will have an impact on the Compact provisions, but she did not think Mudarri addressed that at all. Not to disagree, but she did disagree with Ms. Mell.

With no further business, **Chair Rojecki** adjourned the meeting at 10:25 a.m. The next meeting will be held in October at the Lacey Community Center.

Minutes prepared by:

Gail Grate  
Executive Assistant